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EXAMINER

TORRES, MARCOS L

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENRIK BORJESSON

Appeal 2009-010354
Application 10/534,139
Technology Center 2600

Before MAHSHID D. SAADAT, ROBERT E. NAPPI,
and MARC S. HOFF, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the rejection of claims 1-8, 10-21, and 23-28. Claims 9 and 22 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellant's invention relates to generating an alert signal based on the geographical position of a device and also based on the date or time. In other words, the alert signal is generated only when both the time and location conditions are satisfied. Spec. 6:8-17.

Independent claim 1 is illustrative of the invention and reads as follows:

1. A device for generating an alert signal comprising:
 - positioning means for updating and storing an actual position of the device, comprising:
 - location storage means for storing the location of a place of interest;
 - means for storing a request for an alert signal associated with the location of a place of interest;
 - first trigger means for comparing the actual position of the device with the location of the place of interest and triggering generation of said alert signal when the distance between the actual position of the device and the location of the place of interest is less than a predetermined value (r);
 - calendar means for storing calendar entries;
 - clock means for keeping track of the actual time; and
 - second trigger means for comparing the actual time with a calendar entry and triggering generation of said alert signal when the actual time matches the calendar entry, but only when the distance between the actual position of the device and the location of the place of interest is less than the predetermined value (r).

The Examiner relies on the following prior art in rejecting the claims:

Ishikawa	US 5,598,166	Jan. 28, 1997
Dussell	US 5,938,721	Aug. 17, 1999
Vossler	US 6,317,593 B1	Nov. 13, 2001
Shinozaki	US 6,785,552 B2	Aug. 31, 2004
Zellner	US 6,799,049 B1	Sep. 28, 2004
Pihl	US 6,950,663 B2	Sep. 27, 2005

Claims 1-4, 7, 12-17, 25, 26, and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dussell.

Claims 5 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dussell and Zellner.

Claims 6 and 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dussell and Shinozaki.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dussell and Ishikawa.

Claims 10, 11, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dussell and Vossler.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dussell and Pihl.

ISSUE

With respect to claims 1 and 14, the issue is whether Dussell discloses “triggering generation of said alert signal when the actual time matches the calendar entry, but only when the distance between the actual position of the device and the location of the place of interest is less than the predetermined value (r).”

ANALYSIS

The Examiner takes the position that Dussell teaches the disputed claim language related to generating the alert when the actual time matches the calendar entry and the position of the device is near the place of interest. The Examiner relies on the sentence in column 7, lines 23-24, of Dussell and concludes that Dussell teaches the disputed claim limitation because the disclosed scheduling or prioritizing based on location indicates that a task is scheduled and/or prioritized based on location (Ans. 9-10).

Appellant contends that the alert in Dussell is based only on location, but not conditioned on time (App. Br. 6-7). Appellant further points out that while the alert in Dussell may be generated when the priority of the task changes as the device is moved closer to the location, the alert is not conditioned on the actual time (Reply Br. 2).

We agree with Appellant that Dussell does not indicate that the alert for the task is generated when the person is near the task location *and* it is a certain time of the day. The relied-on portion of Dussell specifically states that “[t]he present invention provides a means by which tasks can be scheduled and/or prioritized based on location.” *See* col. 7, ll. 22-24. In other words, Dussell mentions “time” in the sense of scheduling in a calendar or prioritizing, but not in the sense of actual time as a condition for generating the alert. As stated by Appellant (Reply Br. 2), Dussell generates the alert only based on location.

Therefore, we disagree with the Examiner’s finding that the limitation “triggering generation of said alert signal when the actual time matches the calendar entry, but only when the distance between the actual position of the device and the location of the place of interest is less than the predetermined

value (r)” is taught by Dussell. Accordingly, Dussell does not anticipate claims 1 and 14 or claims 2-4, 7, 12, 13, 15-17, 25, 26, and 28 dependent thereon. We also do not sustain the 35 U.S.C. § 103 rejections of dependent claims 5, 6, 8, 10, 11, 18-21, 23, 24, and 27 over the combination of Dussell with various cited prior art since the Examiner has not pointed to any teachings in those references that would have cured the above-mentioned deficiency of Dussell.

CONCLUSION

On the record before us, we find that the Examiner erred in rejecting claims 1-4, 7, 12-17, 25, 26, and 28 under 35 U.S.C. § 102(b) and claims 5, 6, 8, 10, 11, 18-21, 23, 24, and 27 under 35 U.S.C. § 103(a).

ORDER

The decision of the Examiner rejecting claims 1-8, 10-21, and 23-28 is reversed.

REVERSED

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